THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 11533 of 2006

13-06-2006

Between:-

Guntupalli Leela Kumari

Petitioner

And

Sri Kakuleswara Swamy Devastanam, Srikakulam village, Ghantasala Mandal, Krishna district rep., by its Assistant Commissioner and Executive Officer and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 11533 of 2006

Oral order:

The petitioner claims to be the cultivating tenant of lands in an extent of Ac. 4-92 cents in R.S.No. 1027 of Srikakulam village, Ghantasala Mandal, Krishna district belonging to the 1st respondent-Sri Kakuleswara Swamy Devastanam. She also claims to be a landless poor person, as she does not have any other land except the aforesaid lands, which are under cultivation belonging to the 1st respondent-Devasthanam.

According to the pleadings in the writ petition, initially the father-in-law of the petitioner one G. Satyanarayana was the lessee of the lands since the year 1970. On Satyanarayana's death in the year 1974, the petitioner's husband – G. Venkata Subba Rao continued the cultivation of the lands and was paying the lease amount regularly. Venkata Subba Rao died in the year 1999 and thereafter, the petitioner claims she is cultivating the lands and paying the lease regularly which is being accepted by the 1st respondent-Devasthanam.

While so, the 1st respondent issued a public auction notification dated 01-06-

2006 proposing conduct of public auction on 13-06-2006 for granting of leasehold rights of the lands of the 1st respondent-Devasthanam which are under the cultivation of the petitioner. Since representations to the 1st respondent became futile, the petitioner approached this court asserting that the impugned public auction notice is illegal and contrary to the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and the Rules framed thereunder.

The petitioner has neither pleaded, asserted nor established that she is a legitimate cultivating tenant of the lands of the 1st respondent-Devsthanam and that there was a lease in her favour substantiating such claim. The benefits under Section 82 of the Act to landless poor persons are only available to the cultivating tenants and not to encroachers. The fact that the Manager of the 1st respondent-Devasthanam or any other officer in the hierarchy of the Endowment Department have acquiesced in the illegal continuance and cultivation by the petitioner of the lands of the 1st respondent-Devasthanam, would not cloak the petitioner with the status of a 'cultivating tenant'. The Commissionerate of Endowments is an agency that exists to execute the legislative mandate *qua* the provisions of the Act. It has neither the discretion nor any power whatsoever to overreach or subvert the provisions of the Act. Any defacto conduct of the officers of the Endowment Department or any acquiescence in a transaction or circumstance contrary to the provisions of the Act, would not confer legitimacy or legality on such event or transaction.

Section 82 (1) of the Act ordains that any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment, subsisting on the date of commencement of the Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stand cancelled. In the absence of determination of any person cultivating the lands of the 1st respondent-Devasthanam as a landless poor person, (there is no pleading that there was any such determination as landless poor person of either the petitioner's late father-in-law or late husband), the lease of the lands in favour of the petitioner's father-in-law, if any, stood determined by the operation of the legislative provisions.

On principle and authority and in the light of Rule 7 of the Andhra Pradesh

Charitable and Hindu Religious Institutions and Endowments lease of Agricultural Lands Rules, 2003 (for short 'the Rules'), all leases of the agricultural lands belonging to the charitable and Hindu religious institutions and endowments shall be by public auction and not otherwise. A narrow corridor of discretion is specifically conferred on the competent authority to permit lease of any property otherwise than by public auction, if for reasons recorded, the competent authority is satisfied that the alternative method is in the interest of the institution or Endowment.

It is not established that following the statutory procedure any lease has been granted in favour of the petitioner. The petitioner is therefore in possession and cultivation of the lands of 1st respondent-Devasthanam as an encroacher and cannot claim the benefits of Section 82 of the Act, which are available only to cultivating tenants. The petitioner is, therefore disentitled to resist the impugned notification issued by the 1st respondent-Devasthanam for conduct of public auction for grant of leasehold rights of the lands of the 1st respondent-Devasthanam.

On the aforesaid analysis, there are no merits in the writ petition. The writ petition is accordingly dismissed, at the stage of admission, after hearing the learned Government Pleader for Endowments. No costs.

_____

GODA RAGHURAM, J

Dated:13-06-2006

Pvks/*